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OFFICE OF PETITIONS

In re Application of
John K. Lowther :
Application No. 10/613,777 :
Filed: February 2, 2004 :
Attorney Docket No: 7066-1-CIP3-CON :
:

ON PETITION

This is a decision on the petition filed September 28, 2005, to withdraw the holding of abandonment under 37 CFR 1.181, or in the alternative, to revive the above identified application under 37 CFR 1.137(b).¹

The petition to withdraw the holding of abandonment is **DISMISSED**.
The petition to revive under 37 CFR 1.137(b) is **GRANTED**.

The application was held abandoned on November 2, 2004, for failure to file a timely response to a restriction requirement September 29, 2004. The office action set a one month shortened statutory period. Accordingly, a Notice of Abandonment was mailed on June 3, 2005.

In the petition to withdraw the holding of abandonment under 37 CFR 1.181, petitioner asserts that in a telephone conversation between petitioner and the Examiner responsible for examining this application, the Examiner agreed to make the necessary

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

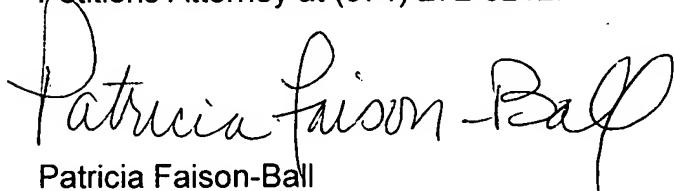
elections and issue a first office action. Unfortunately however, the requirement for responding to communications mailed from the USPTO must be in writing as is required by 37 CFR 1.2. Petitioners are advised that in the absence of the restriction requirement not being withdrawn by the USPTO, then by law a response was required. The failure to file a response caused the application to become abandoned.

Applicants are not afforded an opportunity to withhold a written response to an office communication even based on a conversation and reliance upon that conversation with an office employee. In view thereof, the holding of abandonment will not be withdrawn.

With respect to the petition to revive, the petition fee in the amount of \$1500.00 has been charged to deposit account no. 19-1970.

All other requirements under 37 CFR 1.137(b) having been met, this matter is being referred to Technology Center 3723 for appropriate action on the election filed September 28, 2005.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions